

ARIZONA BOARD OF APPRAISAL
1400 West Washington, Suite 360
Phoenix, Arizona 85007
(602)542-1539 FAX (602)542-1598
Web Site: www.appraisal.state.az.us

MINUTES
TELEPHONIC REGULAR BOARD MEETING
WEDNESDAY, MARCH 11, 2009, 9:00 AM.

Board Members Present Telephonically at Roll Call: Les Abrams, Gabe Corral, Victor Hartsfield, Myra Jefferson, Michael Marquess, Debbie Rudd. A quorum was present. Board Members Absent: Cynthia Henry. Vacant Board Member Positions: Certified General Appraiser; Public.

Also Present in Person at Roll Call: Debb Pearson, Executive Director; Rebecca Loar, Regulatory Compliance Administrator; Christopher Munns, Assistant Attorney General, Solicitor General's Office. Also Present Telephonically after Roll Call: Jeanne Galvin, Assistant Attorney General.

Les Abrams acted as Chairperson.

APPROVAL OF MINUTES

Myra Jefferson moved that the Minutes of the February 19, 2009, Regular Board Meeting be approved. Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. A quorum was not present to approve the Minutes of the February 27, 2009, Phoenix Board Outreach Meeting.

COMPLAINT REVIEW

Review and Action Concerning 2537, David M. Hossfeld.

Respondent did not appear. Michael Marquess moved that the Board amend the 6/24/08 Consent Agreement and Order to allow the mentor to prepare Standard 3 Reviews upon proof to the Board that the client will not accept a co-signature. Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2439/2520/2523, William a. Buehl.

Respondent appeared prior to the meeting, but did not stay for the meeting. Upon its 12-month file review, the Board noted that the matters had been scheduled for informal hearing.

Review and Action Concerning 2477, Robert L. VanDyke.

Respondent did not appear. Upon its 12-month file review, the Board noted the pending formal hearing before the Office of Administrative Hearings (OAH).

Review and Action Concerning 2481, Daniel W. Mahoney.

Respondent did not appear. Upon its 12-month file review, the Board noted that the matter had been scheduled for informal hearing.

Review and Action Concerning 2487, Nathan G. Morris.

Respondent did not appear. Upon its 12-month file review, the Board noted the pending formal hearing before the Office of Administrative Hearings (OAH).

Review and Action Concerning 2492, Felicia M. Coplan.

Respondent did not appear. Upon its 12-month file review, the Board noted that the matter was pending the Superior Court decision concerning 1782/1784.

Review and Action Concerning 2502, Clare A. Williamson-Redding.

Respondent did not appear. Upon its 12-month file review, the Board noted the pending formal hearing before the Office of Administrative Hearings (OAH).

Review and Action Concerning 2503, Randall P. Jacobs.

Respondent did not appear. Upon its 12-month file review, the Board noted the pending formal hearing before the Board.

Review and Action Concerning 2516, Timothy R. Fortunato.

Respondent did not appear. Upon its 12-month file review, the Board noted that the matter was pending settlement.

Review and Action Concerning 2541, John T. Martell.

Respondent did not appear. Upon its 12-month file review, the Board noted that the matter was pending settlement.

Jeanne Galvin, Assistant Attorney General, joined the meeting telephonically.

Review and Action Regarding Issues Dealing With Formal Hearing Concerning 2453 (08F-2453-BOA), Jaime Topete.

Respondent did not appear until after the meeting had adjourned. Jeanne Galvin, Assistant Attorney General, represented the State. Christopher Munns, Assistant Attorney General, Solicitor General's Office, advised the Board. The Board, having reviewed the record, heard oral argument on behalf of the State. Debbie Rudd moved that the Board accept Findings of Fact 1-20 of the Administrative Law Judge, to read as follows:

FINDINGS OF FACT

1. The Arizona State Board of Appraisal ("Board") is the authority for regulating and controlling the licensing and certification of real property appraisers in the State of Arizona.

2. There are three classifications for appraisers in Arizona: state certified general appraisers; state certified residential appraisers; and state licensed appraisers.
3. Jaime Topete ("Respondent") is the holder of Certified Residential Appraiser Certificate No. 21207.
4. On or about July 26, 2007, the Board received a Real Estate Appraiser Violation Complaint against Respondent filed by Roger E. Beagle, Sr. A copy of the complaint was sent to Respondent. Mr. Beagle alleged that Respondent had violated provisions of Uniform Standards of Professional Appraisal Practice, 2006 edition ("USPAP 2006") in his appraisal report prepared on December 19, 2006 for a residential property located at 3801 E. Lincoln Drive, Paradise Valley, Arizona.
5. Mr. Beagle is an appraiser.
6. On or about August 30, 2007, Respondent filed a response to Mr. Beagle's complaint with the Board. Respondent denied the allegations contained in the complaint.
7. Mr. Beagle's complaint against Respondent was assigned to Linda S. Beatty, a contract investigator for the Board, for investigation. Ms. Beatty is a certified general appraiser.
8. On or about December 18, 2007, Ms. Beatty submitted a written investigative report to the Board's Executive Director, Deborah G. Pearson. After completing her investigation, Ms. Beatty opined that Respondent violated the following USPAP 2006 provisions in the subject appraisal: Standard Rule 1-1; Standard Rule 1-4; Standard Rule 1-5; and Standard Rule 2-1. Ms. Beatty further concluded that Respondent also violated the provisions of A.R.S. § 32-3635, Standards of Practice.
9. On or about January 5, 2009, the Board's Executive Director, Deborah G. Pearson, issued a Complaint and Notice of Hearing against Respondent alleging conduct by him in violation of USPAP 2006. The Complaint and Notice of Hearing advised Respondent of the time, date and location of the formal hearing.
10. The Complaint and Notice of Hearing was delivered to Respondent's address of record on January 6, 2009 at 7:33 a.m.
11. The commencement of the scheduled hearing was delayed approximately 15 minutes to allow for the late arrival of Respondent or an attorney authorized to represent him. After the delay the Administrative Law Judge conducted the hearing in Respondent's absence.
12. In his appraisal report, Respondent stated that property values were increasing and marketing times were under three months. In fact, comparable sales reported marketing times from 142 to 293 days. Respondent also failed to note exposure time.
13. Respondent's appraisal report included an out-dated Appraisal and Report Identification addendum, specifically identifying his appraisal as a Complete Appraisal, with no departures. This terminology was eliminated in the USPAP 2006.
14. Respondent's appraisal report identifies the subject property's improvements as good quality construction, good condition and highly upgraded. In fact, the subject property was mostly original 1975 condition and in need of significant updates, which would cost several hundred thousand dollars to bring to current Paradise Valley standards.
15. Based upon an exterior inspection and information provided by listing agents, all comparables appeared to be superior in location and upgrades. No adjustments for either of these items were noted in Respondent's appraisal report.

16. Respondent's appraisal report estimated the subject property value at \$1,250,000.00 in the Cost Approach, indicating land value at nearly \$29.00 per square foot. Adjustments to Comparables for differences in site areas are made at \$1.00 per square foot.
17. Respondent's appraisal report failed to include External Obsolescence in the Cost Approach.
18. Respondent classified the subject property as excellent quality construction at \$129.34 per square foot. However, Respondent's comparables were adjusted at \$40.00 per square foot for differences in livable area.
19. Respondent's data adjustments presented in the Sales Comparison Approach were not complete. He made no adjustment for the subject property's location on a major arterial street. Respondent's appraisal report lacked alternative analysis or data.
20. Respondent's appraisal report stated that the subject property was under contract at the time of appraisal for \$1,750,000.00. It had been listed for nine months at \$1,375,000.00, then reduced to \$1,200,000.00 and subsequently cancelled. Although Respondent stated that he analyzed the purchase contract, the only statement contained in his appraisal report was the following: "Purchase contract appears typical for market." Respondent's appraisal report lacked any discussion of the discrepancy between the cancelled list price and current contract price.

Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Debbie Rudd moved that the Board accept Conclusions of Law 1-11 of the Administrative Law Judge, to read as follows:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in this case.
2. Pursuant to A.R.S. § 41-1092.07(G) (2), the Board has the burden of proof in this matter. The standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A).
3. Pursuant to A.R.S. § 32-3605(B)(1), the Board prescribed the USPAP 2006 as the standards of professional appraisal practice for the period of time when Respondent performed his appraisal report.
4. Respondent violated the provisions of USPAP 2006, Standard Rule 1-1 (a) and (b), which read as follows:

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal;

The factual bases for this conclusion are the following: Respondent's failure to identify the subject property's External Obsolescence reflects a lack of knowledge of recognized methods and techniques; Respondent's choice of superior comparables and inadequate adjustments was inconsistent with current appraisal practice; and Respondent's failure to consider the subject property's listing history in light of the contract price indicated a lack of knowledge of current market trends.

5. Respondent violated the provisions of USPAP 2006, Standard Rule 1-1(c), which reads as follows:

In developing a real property appraisal, an appraiser must:

- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, affects the credibility of those results.

The above Findings describe errors and/or omissions in Respondent's appraisal report supporting the conclusion that his appraisal report was prepared in a careless or negligent manner.

- 6. Respondent violated the provisions of USPAP 2006, Standard Rule 1-4(b) (iii), which reads as follows:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (b) When a Cost Approach is necessary for credible assignment results, an appraiser must:
 - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

- 7. Respondent violated the provisions of USPAP 2006, Standard Rule 1-5(a), which reads as follows:

When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

- (a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal;

The basis for this violation is Ms. Beatty's conclusions that Respondent failed to include any explanation for the subject property's estimated market value to be \$550,000.00 over the most listed list price, and his failure to discuss or analyze the subject property's marketing history.

- 8. Respondent violated the provisions of USPAP 2006, Rule 2-1(a), which reads as follows: Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading. Ms. Beatty expressed the following criticisms of Respondent's appraisal report to support this violation: Respondent "chose superior comparables with unsupported adjustments"; "Numerous errors were discovered throughout the report"; and, "[t]he omission of any analysis or consideration of the subject's contract price compared to its marketing history would suggest that the appraisal report was prepared in a careless or negligent manner and resulted in a misleading report."

- 9. Respondent violated the USPAP 2006, Ethics Rule – Conduct. The factual basis for this conclusion is the above-described Conclusion No. 8.

- 10. Respondent's above-described violations of USPAP 2006 constitute a violation of A.R.S. § 32-3635(a) and (b).

- 11. Pursuant to A.A.C. R4-46-301, the Board may utilize its Substantive Policy Statement #1, Guidelines for Board Complaint Resolution, in this matter. The Administrative Law Judge concludes that Respondent's violations in this matter constitute Level III violations, which are described as follows:

Violations found with substantial errors or a series of errors that in the aggregate may affect the credibility of the assignment. Minor violations of ethics and/or competency may be found.

Violations found rise to the level of affecting the credibility of the assignment. Pursuant to the Board Complaint Resolution Chart, the following disciplinary actions are appropriate in this matter: Order of Probation with Education, Mentorship and/or Practice Restrictions.

Victor Hartsfield seconded the motion. The Board voted unanimously in favor of the motion. Debbie Rudd moved that the Board adopt the Order of the Administrative Law Judge with modifications to include the Board's standard probation language, to read as follows:

ORDER OF PROBATION

In issuing this order of discipline, the Board considers its obligations to fairly and consistently administer discipline, its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY ORDERED:**

1. **Upon the effective date of this Order, Respondent's Certificate as a Certified Residential Appraiser shall be placed on probation for a period of twelve (12) months.** During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.
2. Respondent shall successfully complete the following education prior to the termination of probation: **minimum twelve (12) hours of coursework in Sales Comparison Approach, and a minimum six (6) hours of coursework in Mortgage Fraud.** The education required above may not be counted toward the continuing education requirements for the renewal of Respondent's certificate. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required courses.
3. During the term of probation, Respondent shall: (a) demonstrate resolution of the problems that resulted in this disciplinary action; and (b) otherwise comply with the terms of this Order.
4. During the period of probation, Respondent shall complete a minimum of **twelve (12) appraisal reports or review appraisals** under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's Mentor ("Mentor"). The Mentor shall be either an Arizona Certified Residential or Certified General Appraiser.
5. **During the probationary period, the Respondent shall not issue a verbal or written appraisal, appraisal review, or consulting assignment without prior review and approval by a Mentor.** Each report shall be signed by the Mentor as a supervisory appraiser. In the event that Respondent's client will not accept the signature of the Mentor affixed to an assignment as a supervisory appraiser, the Mentor need not co-sign the report, but must complete a written review of each report ensuring that the report complies with USPAP and the Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued to the client. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the Respondent and approved by the Mentor before the report is issued. The Mentor's written Standard 3 review shall be maintained by the Mentor and made available to the Board upon request. In order to invoke these provisions,

- the Respondent must submit proof to the Board with his monthly log showing that his client's policies prevent co-signature by the Mentor.
6. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Order. The Mentor may not have a business relationship with Respondent except for the Mentor/Mentee relationship nor may the Mentor be related to Respondent. Any replacement Mentor is subject to the Board's approval and the remaining terms of this Order. The Board's Executive Director may give temporary approval of the Mentor until the next regular meeting of the Board.
 7. Not more than **30 days** after the effective date of this Order, Respondent shall submit to the Board the name and resume of an Arizona Certified Residential or Arizona Certified General Appraiser who is willing to serve as Respondent's Mentor together with a letter from the potential Mentor agreeing to serve as Respondent's Mentor. If requested by Board staff, Respondent shall continue to submit names, resumes, and letters agreeing to serve as Mentor until a Mentor is approved by the Board. Any Mentor must be approved in writing by the Board.
 8. Respondent shall bear all costs and expenses associated with the mentorship and incurred in attending the required courses.
 9. The Mentor shall submit monthly reports to the Board for each calendar month during Respondent's probationary period reflecting the quantity and quality of Respondent's work, including, but not limited to, improvement in Respondent's practice and resolution of those problems that prompted this action. The Mentor's report shall be filed monthly beginning the 15th day of the first month following the start of Respondent's probationary period and continuing each month thereafter until termination of the probationary period by the Board. **Even if the Mentor reviews no appraisals during a given month, a report stating that no appraisals were reviewed or approved must be submitted. It is the Respondent's responsibility to ensure that the Mentor submits his/her reports monthly.** If the monthly reporting date falls on a Saturday, Sunday, or holiday, the report is due on the next business day. The monthly report may be filed by mail or facsimile.
 10. The Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that he has completed within the prior calendar month by property address, appraisal type, valuation date, the Mentor's review date, the date the appraisal was issued, and the number of hours worked on each assignment. The report log shall be filed monthly beginning the 15th day of the first month following the start of Respondent's probationary period and continuing each month thereafter until the Board terminates the probation. If the log reporting date falls on a Saturday, Sunday, or holiday, the report log is due on the next business day. **Even if Respondent performs no appraisals within a given month, he must still file an appraisal log with the Board showing that no appraisals were performed.** The monthly log report may be filed by mail or facsimile.
 11. The Board reserves the right to audit any of Respondent's reports and conduct peer review, as deemed necessary, during the probationary period. The Board may, in its discretion, seek separate disciplinary action against the Respondent for any violation of the applicable statutes and rules discovered in an audit of the Respondent's appraisal reports provided to the Board under the terms of this Consent Agreement.

12. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 13, and (b) the Board terminates the probation and mentorship. Upon petition by the Respondent for termination of the probation and mentorship, the Board will select and audit 3 of Respondent's appraisal reports.
13. At the end of **twelve (12) months** from the effective date of this Order, the Respondent must petition the Board for termination of his mentorship and probation. If the Board determines that Respondent has not complied with **all** the requirements of this Order, the Board, at its sole discretion, may institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial action.
14. Respondent shall not act as a supervising appraiser for other appraisers or trainees, nor shall he act as a mentor during the term of the probation. Respondent shall also not teach any course related to real estate appraisals during the term of the probation.
15. Respondent shall comply with the Uniform Standards of Professional Appraisal Practice in performing all appraisals and all Board statutes and rules.
16. If, between the effective date of this Order and the termination of Respondent's probation by the Board, Respondent fails to renew his license while under this Order and subsequently applies for a license or certificate, the remaining terms of this Order, including probation and mentorship, shall be imposed if the application for license or certificate is granted.
17. Respondent understands that this Order, or any part thereof, may be considered in any future disciplinary action against him.
18. If Respondent fails to comply with the terms of this Order, the Board shall properly institute proceedings for noncompliance with this Order, which may result in suspension, revocation, or other disciplinary and/or remedial actions. Respondent understands that any violation of this Order is a violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any of the provisions of the Board's statutes or the rules of the Board for the administration and enforcement of its statutes.
19. Respondent understands that this Order does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regard any other pending or future investigation, action or proceeding
20. Respondent understands that this Order is a public record that may be publicly disseminated as a formal action of the Board.
21. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations in the above-mentioned matter to constitute to a **Level III Violation**.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Respondent is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within 30 days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective 35 days after it is mailed to Respondent.

Respondent is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion. The Board noted the 12-month file review.

APPLICATION REVIEW COMMITTEE REPORT

Debbie Rudd reported the following Arizona appraiser and property tax agent information as of March 10, 2009:

| | <u>3/07</u> | | <u>3/08</u> | | <u>3/09</u> |
|-----------------------|-------------|------------|-------------|------------|---------------|
| Licensed Residential | 1094 | | 1027 | | 827 |
| Certified Residential | 990 | | 1175 | | 1242 |
| Certified General | 775 | | 807 | | 819 |
| Nonresident Temporary | 42 | Total 2901 | 33 | Total 3042 | 35 Total 2923 |
| Property Tax Agents | 270 | | 269 | | 292 |

Michael Marquess moved that the Board accept the Committee's recommendations (see attached). Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

APPRAISAL TESTING AND EDUCATION COMMITTEE REPORT

Victor Hartsfield moved that the Board accept the Committee's recommendations (see attached). Michael Marquess seconded the motion. The Board voted unanimously in favor of the motion.

CONFIRMATION OF MEETING DATES, TIMES, LOCATIONS AND PURPOSES

The upcoming Committee and Board meetings were confirmed as follows:

March

27 Phoenix Board Outreach #2 9:00 a.m.

April

15 Application Review Committee 2:00 p.m.

15 Testing and Education Committee 2:30 p.m.

16 Board 9:00 a.m.

ADJOURNMENT

The meeting was adjourned.

Lester G. Abrams, Chairperson